

CALIFORNIA CORRECTIONS AT THE CROSSROADS

**Testimony of Dr. Barry Krisberg Ph.D.
September 10, 2004**

Thank you for the opportunity to comment on the recent report of the California Independent Review Panel on the youth and adult corrections departments. Governor Schwarzenegger is to be congratulated for publicly acknowledging the stark crisis facing these agencies. He has appointed top officials who have committed their agencies to major reforms, and he has initiated this comprehensive search for solutions. These new leaders face the daunting task of overcoming decades of misguided and harmful law changes, short-sighted correctional policies, and questionable fiscal priorities. The Governor and his new leadership team need all of our help to change the unacceptable status quo.

For the past 18 months I have been intensely involved in a comprehensive review of the California Youth Authority (YA) in response to a lawsuit filed by the Prison Law Office. This review involved interviews with hundreds of staff and inmates, site visits to six facilities, and an exhaustive examination of documents. I reported a number of very alarming conditions including extraordinary levels of institutional violence, frequent use of chemical restraints, excessive use of prolonged solitary confinement, the provision of educational services to some youthful inmates in cages not suitable for zoo animals, decrepit housing units, and inadequate attention to security classification. Other members of this review team documented substandard mental health and medical care, as well as major deficiencies in educational services. These reports are available through the YA.

For the last several months members of the review team have been working with YA leadership and staff to begin planning remedies for these dire conditions. Implementation of these proposed reforms will be closely monitored under a court-sanctioned agreement between the YA and the plaintiff's attorneys. But, the success of these reform efforts will depend not only on the quality of the plans, but also on the strong commitment of YA leadership to bring about a fundamental shift in organizational culture, and the willingness of the Governor and the Legislature to provide sufficient funding to make the changes happen.

Although I will limit my comments to the YA, I believe that it is critical to place the current situation in the broader context of corrections in California. Over 20 years ago, the National Council on Crime and Delinquency convened a Summit Conference on corrections in California. Funded by a number of foundations, the meeting brought together leadership from all branches of government. National leaders in research and corrections policy joined in the statewide forum. In 1982 the primary concern was increasingly crowded prisons. By 1982 prisons designed to hold approximately 25,000 people had populations surpassing 30,000. The good news was that the YA population was approximately 6,000, only slightly above rated capacity. Participants at the Summit Conference discussed the dangers posed by crowded prisons and the possibility that the federal courts might intervene and take over the state corrections system.

In hindsight, the deliberations of the Summit Conference attendees seem amazingly naïve. No one at that meeting would have ventured to forecast a prison system with over 160,000 residents, which, despite the building of 22 new prisons, is more crowded today than ever before. From 1982-1997 the YA population steadily grew to over 10,000 inmates who were jammed in facilities designed to hold about half that number. Despite billions of dollars invested in building new prisons, only one new YA institution was opened in 1991 and very few dollars were spent on maintaining and repairing these juvenile correctional facilities. Most YA facilities were not designed to handle more serious juvenile offenders, especially those with severe mental health problems. Existing YA institutions are in states of terrible disrepair.

Few, if any, 1982 conferees would have imagined the enormous number of lawsuits filed against the corrections department, or the hundreds of million of dollars that were invested in either defending against these legal attacks, or remedying instances of criminal treatment of inmates and other grave constitutional defects. Moreover, the notion that California would eventually possess one of the highest parole failure rates in the U.S. would have been dismissed as exaggerated rhetoric.

What happened? Beginning in Governor Jerry Brown's Administration and during the terms of Governors George Deukmejian, Pete Wilson, and Gray Davis, the executive branch and the legislature enacted laws and policies that fueled the extraordinary growth of the prison system. The voters contributed to the mounting crisis by overwhelmingly supporting ballot propositions that further increased the prison population. In 2000, the voters supported Proposition 21, which enacted very tough penalties for juvenile offenders. The goal of adult incarceration was clearly defined by the lawmakers as punishment versus rehabilitation, with funding for education, job training, and counseling falling well behind the growth of the inmate population. While the official mission of the YA continued to value treatment and education, the YA increasingly took on the trappings of the CDC. The rapid and unprecedented growth in the adult prison system also coincided with the emergence of the California Correctional Peace Officers Association (CCPOA) as one of the most dominant **political** groups in the state.

CCPOA became a major source of what former Assembly Speaker Jesse Unruh called the "mother's milk of politics"—money. Elected officials of both parties sought funding and endorsements from CCPOA. The union grew ever more powerful and negotiated contracts that guaranteed its members lucrative compensation, a greater share of prison management, and insulated them from public accountability. At least one influential legislative staffer referred to CCPOA as "the fourth branch of California state government."

Various reports of the Little Hoover Commission and a legislatively established Blue Ribbon Panel on Inmate Population Management, the Office of Inspector General, outlined sweeping and specific reforms, but few of these were adopted. Most recently, a senior federal judge, expressing his frustration over the lack of progress, suggested that it might be time to declare the corrections system bankrupt and appoint a receiver. The Independent Review Panel is the latest

comprehensive effort to suggest ways to move this wildly out-of-control corrections system towards a defensible reform agenda.

Goals for Comprehensive Reform of the YA

The pathway from the tragic and unacceptable conditions and practices that were found at the YA institutions requires attention to a number of key goals. First, the YA must embrace evidence-based practices. Second, the YA must reconnect with juvenile justice officials and community leaders at the local level. Third, the YA must become more subject to meaningful independent outside scrutiny that is guided by objective performance standards and established legal mandates.

A focus on evidence-based practices would lead directly to reducing the population of all living units in YA facilities and replacing existing institutions with much smaller units. The YA's own research in the 1970s was utilized by many other states to downsize their juvenile facilities.¹ This research showed that smaller living units were less prone to violence and produced better results for juveniles released to their communities. Further, a commitment to evidence-based practices would require YA to restructure its treatment services to balance education and vocational services with high-quality cognitive and mental health counseling, and to substantially increase the emphasis on reentry and aftercare services.² The research evidence would lead YA away from the use of solitary confinement except as a last resort, and toward positive behavioral incentives for success. Programs and policies that increase the constructive bonds between YA inmates and their families are strongly supported by existing research.³ More fundamentally, the state of California must invest appropriate resources in research on the success or failure rates of young people who are released from the YA including systematic and valid measurements of recidivism rates, educational attainments, and employability.

Young people in the YA come from California's diverse communities and the vast majority of the young people that are now locked up will return to their communities. Most of these young people historically have not been well served in local juvenile justice options, but communities have a strong public safety stake in young people making a successful transition home after their YA terms. It is the clear consensus of juvenile justice practitioners that the YA has become more and more isolated from local officials. Judges have described the feeling that a commitment to YA was like sending a youth into the "Bermuda Triangle." While local officials must shoulder some of the responsibility for being disconnected from their young people in the YA, state

¹ Palmer, T. (1992). *The re-emergence of correctional interventions*. Newbury Park, CA: Sage.

² Howell, J.C. (Ed.). (1995). *Guide for implementing the comprehensive strategy for serious, violent, and chronic juvenile offenders*. Washington, DC: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

³ Krisberg, B. (2004). *Redeeming our children*. Thousand Oaks, CA: Sage.

officials have done little to counteract this trend. Local justice officials have complained that YA parole officers are not active participants in the local communities and that communication has been sorely lacking. Severing this key state-local linkage was harmful both to the YA and to county juvenile justice programs. The YA was once a statewide leader in strengthening local juvenile justice programs, establishing professional standards, and training community practitioners. California needs an integrated juvenile justice system.

Knowing what we now know about the deterioration of care in the YA, we must resolve to never allow this situation to reoccur. A civilized society demands no less of its public agencies. The Prison Law Office is to be credited with bringing the problems of the YA into bold relief, however, the citizenry should not rely solely on outside litigation to insure accountability and lawfulness in our youth and adult correctional facilities. It is obvious that existing civilian oversight groups such as the state Juvenile Justice Commission lacked the legislative authority and staff to stay on top of grave problems in the YA. Executive branch agencies such as the Board of Corrections or the Office of Inspector General were not given sufficient power and resources to do more than identify issues. Internal department investigatory resources were similarly hamstrung by state personnel policies and cumbersome procedures. Even in cases in which the YA leadership terminated the employment of offending employees, these individuals were usually restored to their original jobs by the State Personnel Board. Local district attorneys have been reluctant to prosecute alleged criminal behavior by YA employees. Legal oversight of the severe problems of the YA by the Civil Rights Division of the United States Department of Justice has proven time consuming and difficult, at best. The legislature has attempted to monitor the operations of the YA, but it is very difficult for the legislature by itself to focus sufficient time and attention on just one state department, and to frame comprehensive solutions. While internal departmental monitoring and enforcement must be enhanced, California needs a new and strengthened citizen-led approach to ensuring the accountability of its correctional agencies and programs.

Selected IRP Recommendations That Would Help or Hinder YA Reform

The IRP contains a wide array of recommendations that might help improve the professionalism of the YA and produce better public safety returns on taxpayer investments. There are some suggestions that are very complex and require much more in-depth study and examination such as those involving changing key sentencing provisions of the Welfare and Institutions Code. There are some IRP ideas that would, in my view, make meaningful reform of the YA less possible. Let me discuss some of these recommendations within the context of the longer-term goal discussed earlier in my testimony.

The IRP recommends closure of a number of existing YA institutions, and further suggests the reduction of living unit size to 25 and increasing staff to youth ratios to 1 to 8 over several years. These are essential steps to move the YA away from its present imbroglio. Smaller living units, better designed institutions, and improved staffing ratios, especially in the treatment and

education programs, would go a long way to reduce the current unacceptable levels of institutional violence and could result in better outcomes. My concern about these IRP recommendations is that they do not go far enough. Living unit size should be reduced as soon as possible; counseling and treatment staffing ratios must be increased immediately. Moreover, there are presently no YA facilities that are adequate to support effective juvenile correctional programs. Some facilities are decrepit and potentially dangerous; others are simply small prisons that cannot support effective rehabilitation services. Years of neglect of these facilities has brought about a range of expensive and difficult maintenance issues. During my review of six of the largest YA institutions, I was struck by the opinions of the chief security officers at each of the major facilities that these places are not safe for other staff or the youth residing there. Further, the IRP recommendations do not constitute a comprehensive facility plan for YA. What is recommended is a set of interim or emergency measures that may create other problems in the near term such as making family visitation more difficult or severing ties with community groups that now work voluntarily with youngsters in YA facilities. The YA needs a comprehensive and professionally-developed facility and staffing plan that is driven by the custody and treatment needs of present and future YA residents. This plan should define the appropriate role of state and county agencies in the managing of juvenile offenders.

No doubt, such a comprehensive plan would carry a hefty price tag and would require serious consideration of a bond measure. This argues for aggressively pursuing those IRP recommendations that would further reduce the size of the YA population. We have already witnessed a major decline in the YA population due to greater reliance on local placement options. This drop in the YA population occurred as state juvenile crime rates continued to decline. There was no apparent loss in public protection due to the downsizing of the YA.

The population of the YA has declined to less than 4,000 inmates. Now is the time to consider other ways to further reduce this population. For example, the IRP recommends moving toward a system of presumptive sentencing with release incentives or participation in education and treatment programs. The YA currently has a kind of presumptive sentencing system, but decisions of the Youth Offender Parole Board (YOPB) have resulted in many added months of confinement, with few time reductions for program participation. For example, the most serious and violent offenders in the Florida Department of Juvenile Justice stay an average of 20 months, as compared to an average of over 36 months for the California YA population. Better oversight and control of YOPB release decision making could reduce the YA population. The same would be true for better parole planning. If YA possessed an effective parole case management system, and began to plan for the needed post-release supports and services from the moment the young person entered YA, it could implement more reasonable institutional lengths of stay.

The IRP further recommends that judges be given greater authority for parole release decisions for certain categories of YA commitments. I would support extending this release decision making to judges for all YA cases. After all, the vast majority of youths will be returning to their home communities, and their ultimate success will depend heavily on what kinds of supervision and support they will have in the community. This strategy assumes that current YA resources

would be shared with counties to purchase the appropriate services at the local level. The National Council of Juvenile and Family Court Judges has developed a draft manual for a “juvenile reentry court” based on the successful model of juvenile drug courts. This model should be carefully examined by California policy makers.

Focused attention on better parole release decision making and improved parole supervision might further reduce the YA population and reduce the taxpayer costs for operating small and more staff-intensive programs for the remaining youthful inmates. Another approach would be to solicit proposals from community-based groups to rehabilitate current YA residents in proven local programs. The model of the Board of Corrections Challenge Grant Program could be adapted to identify public and nonprofit agencies that want to create effective programs for YA clients. Research has consistently demonstrated that keeping youths closer to home produces recidivism rates as good as or better than large-scale correctional institutions that are located far away from families and home communities, and at much lower costs.⁴

The IRP sets forth a large number of recommendations for improved recruitment, training, and supervision of adult and juvenile correctional staff. These are very important steps. The IRP correctly emphasizes changing the organizational culture, defeating the “code of silence” among correctional workers, and enforcing tighter safeguards on the use of force. Each of these recommendations should be refined to take into account the unique rehabilitation mission of the YA. My review revealed that training of YA staff and managers has been allowed to decline dramatically. New investments in training are essential if the new policies developed by YA as part of the remedy plans are to have any chance to succeed. Further, constant attention to quality control and internal and external independent oversight of operations is absolutely essential.

Finally, I would like to comment on the IRP proposal that YA be subsumed under a new Department of Corrections Services. I believe that this would be a mistake. The YA has historically had a very different mission than the CDC. Many of the laws governing the treatment of juvenile court clients are intended to be very different than those regulating adult inmates. The YA has an affirmative mission to provide rehabilitation, education, and training to its young people. Moreover, the YA needs to be more closely allied with local juvenile justice authorities to provide the most cost-effective services. Placing the YA under a complex and unified state corrections department would be a move in the wrong direction. Gains in efficiency of operations (e.g., a single legal office, combined business operations, integrated legislative liaison and public information) could be accomplished without eliminating the unique and historic mission and identity of the YA. If anything, the YA has moved too much towards a CDC model already, and this trend needs to be reversed as quickly as possible. Further, the CDC is enmeshed in its own larger scandals and crises; the issues of the YA would not receive adequate attention. The national trend is for states to create independent departments of juvenile justice, integrating state-level programs with community options. To fix the YA, California policy makers need to

⁴ Krisberg, B., & Austin, J. (1993). *Reinventing juvenile justice*. Thousand Oaks, CA: Sage.

reaffirm the goals of treatment, training, and education for young people. While the IRP has recognized that this latter approach is more sensible for most prisoners as well, the job of reintroducing comprehensive rehabilitative services into the CDC is a Herculean task. Keeping the YA

an independent state department with even greater direct access to the Governor is a safer organizational approach that supports the necessary reforms of our deeply troubled juvenile correctional system.